

Battle Creek City Planning Commission

Staff report for August 25, 2010 meeting

To: Planning Commissioners

From: Christine M. Hilton, AICP, Planning Supervisor
Planning and Community Development Department

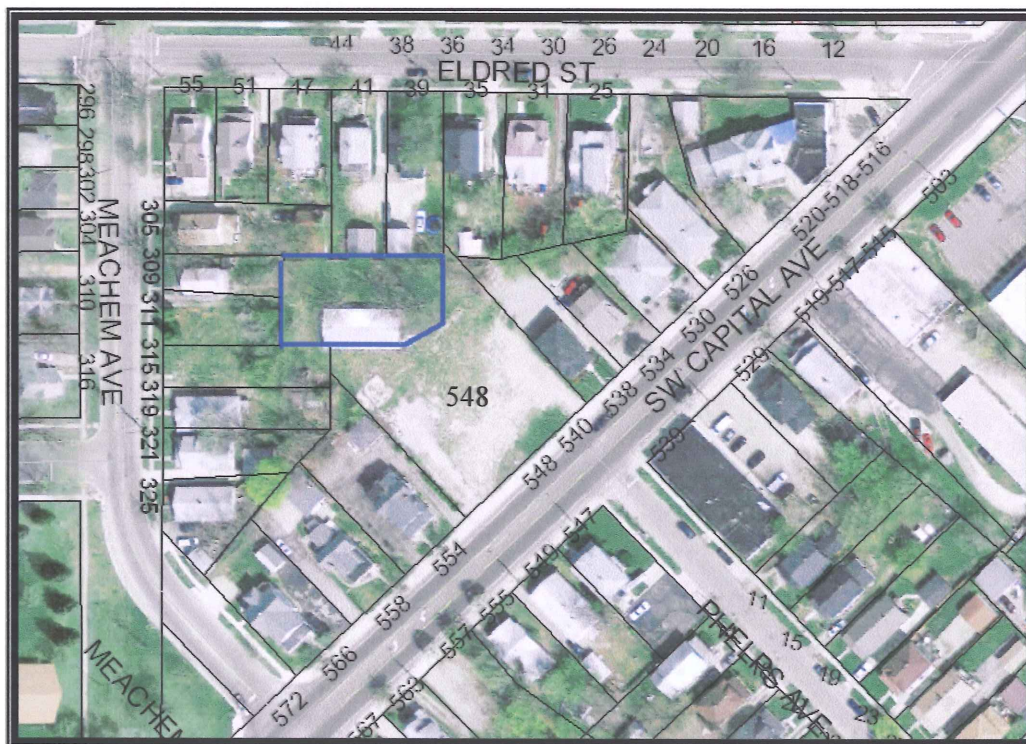
Subject: Petition Z-02-10, a Zoning Reclassification request for Parcel #8440-00-011-1, a vacant parcel on Capital Avenue, S.W.

Summary

A petition from Joel E. Fulton, Fulton Goodwill Enterprises, LLC, 539 Capital Ave. S.W., Battle Creek, MI on behalf of the property owner, requesting a Zoning Reclassification of the following described property from R-1C Single Family Residential to C-3 Intensive Business District located on Capital Ave., S.W., Parcel #8440-00-011-1.

Background/Property Information

The subject property is located north of the intersection of Capital Avenue, S.W. and Meachem Avenue as outlined in blue on the following vicinity map.



Subject Property:

The current zoning of the property is R-1C Single Family Residential. The total land area of this property is 8,631 s.f. (.20 acre). The parcel is an interior lot and has no frontage on any public right-of-way.

The property is vacant any improvements with the exception of one steel pole structure, approximately 1,800 s.f. in size. The building was built in 1980 and was originally constructed as an accessory storage building for 548 Capital Avenue, S.W., located directly southeast of the subject parcel.



The structure and the parcel itself are considered legal nonconforming as under current ordinance the structure would not be allowed without a primary use, and the parcel would not be allowed as it has no frontage on, nor access, to a right-of-way. For nonconforming uses, the zoning ordinance will allow a change in use only if the proposed use is less intensive than the existing use. However, it would be difficult to find a use that is less intensive than storage. Additionally, the zoning ordinance also requires that with a change in use, the property in its entirety come into compliance with current zoning requirements. As the parcel is an interior lot with no frontage on, or access to, a public right-of-way, it is not possible for the property to come into compliance with zoning; therefore, under the current zoning designation, the use of the parcel and structure is essentially limited to what exists today.

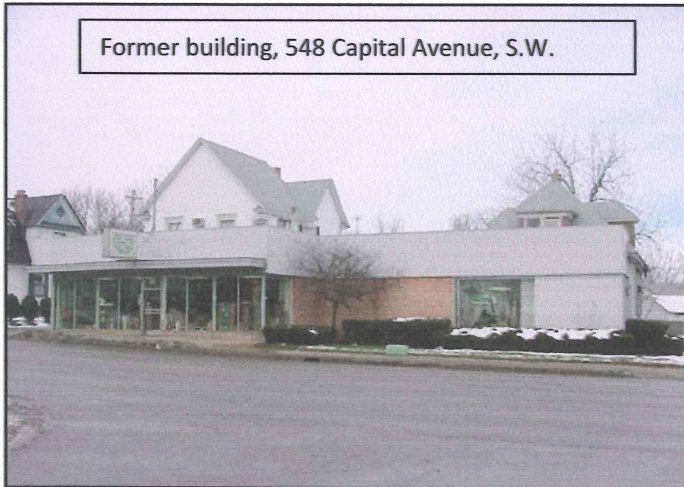
The use of this parcel in accordance with the current R-1C Single Family Residential zoning district is also very limited. A residential use would not be allowed without access to the property, and the use as a residential accessory building would be permitted only if combined with an adjacent occupied residential parcel.

Zoning
 Map of
 Corridor



Surrounding Properties:

The property at 548 Capital Avenue, S.W. is directly adjacent to the subject parcel, and is zoned C-3 Intensive Business District. The property is currently vacant as the structure that had previously occupied the parcel was damaged by fire in 2002 and demolished.



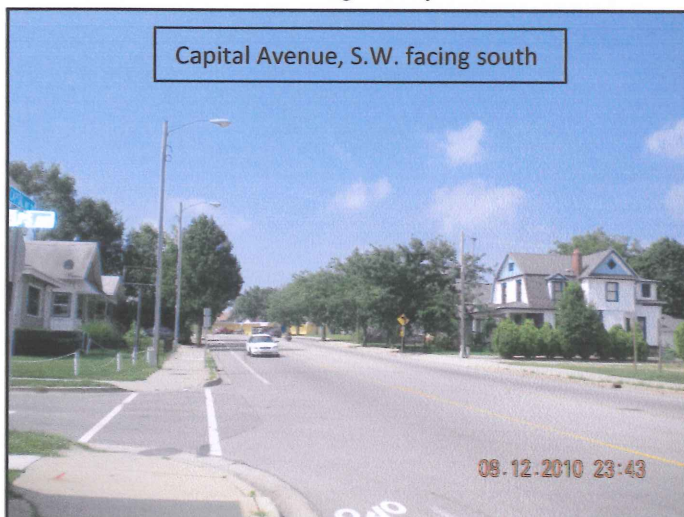
Prior to the demolition, the use of the structure was a mixed use of residential and commercial. The original residential structure had a modern one story commercial addition along the front, typical along this corridor.

Both the subject parcel and 548 Capital Avenue, S.W. are owned by the same property owner; the petitioner for this request has been granted limited power of attorney for both properties.

The properties north and west of the subject parcel are zoned R-1C Single Family Residential and are used for residential purposes, with the exception of the two properties directly west of the subject parcel which are vacant.

The properties to the east and south of the subject parcel along Capital Avenue, S.W. are zoned C-3 Intensive Business district. Historical zoning maps show that commercial zoning has existed along this corridor since 1943 though there are multiple residential structures along the corridor that pre-date the commercial zoning. Many of the original residential structures remain today in some form, and many continue to be used for residential purposes though conversions to commercial uses within the original building, or modern additions, exist.

Capital Avenue, S.W. has a functional road classification as a principal arterial; this section has three drive lanes and an average daily traffic volume of 13,000.



Proposed Scope of Project

The petitioner has indicated that he intends to combine the subject parcel with 548 Capital Avenue, S.W. The parcel combination alone would only provide access to the subject parcel, and the use would still be limited to the legal nonconforming use of storage. Therefore, the petitioner is seeking approval of a zoning reclassification to C-3 Intensive Commercial district to allow for redevelopment of both properties.

The request for a rezoning solely deals with the zoning of the property and subsequently the uses that would be permitted on the property. The planning enabling legislation does not allow for conditions to be placed on an approval, and therefore, any discussions relative to the proposed use as well as site plans, floor plans, building appearances, etc. are not relevant and should not be considered as a basis for a decision. When considering a zoning reclassification request, best practice should be to plan for the most intensive land use allowed within the proposed zoning district because, if approved, any permitted use in the zoning district would be allowed at this location.

Please note, that pending approval of the zoning reclassification, the petitioner will be required to submit a full set of site and building plans for administrative review and approval prior to redeveloping the property, and would be subject to parking lot standards and screening requirements.

Applicable Zoning Ordinance Provision

The City of Battle Creek zoning ordinance was crafted using a pyramidal structure, where specific uses permitted in a less intensive zoning district may also be permitted in a more intensive zoning district. For example, C-1 Neighborhood Commercial district has a list of permitted uses, but also provides that any use within the O-1 Office district is permitted. C-2 General Commercial permits all uses in the C-1 Neighborhood Commercial district, and also subsequently those permitted in O-1 Office district. Therefore, when considering the zoning reclassification petition, please be advised that any of the following permitted uses will be allowed at these locations:

C-3 Intensive Business Districts **1264.03 PERMITTED USES.**

In a C-3 Intensive Business District, a building or premises shall be used only for the following purposes:

- (a) Any use permitted in the C-2 General Business District;
- (b) Any retail business;
- (c) Motor vehicle, trailer and boat display, sales and rental, provided that the space used therefore is paved and adequately maintained so as to provide a durable, smooth and dust-free surface, and is so graded and provided with adequate drainage facilities so that all collected surface water is effectively carried away from the site;
- (d) Motor vehicle repairing, in which all storage of vehicles, as well as all activities, are conducted within a permanent, fully enclosed building;
- (e) Drive-in businesses, excluding drive-in theaters, where service may be in automobiles or outdoors, but with all other activities carried on within a building;
- (f) Second hand stores; and
- (g) Freezer lockers for retail business only.

C-2 General Business District
1262.03 PERMITTED USES.

In a C-2 General Business District, a building or premises shall be used only for the following purposes:

- (a) Any use permitted in the C-1 Neighborhood Commercial District;
- (b) Restaurants and eating establishments, including drive-ins;
- (c) Dyeing and cleaning works, provided that the cleaning fluid used has a base which is of a non-explosive material;
- (d) Hotels and motels;
- (e) Laundries;
- (f) Printing shops;
- (g) Recreation and amusement activities when enclosed within a building;
- (h) Theaters;
- (i) Radio broadcasting and telecasting stations, studios, offices and telecommunications exchange buildings;
- (j) Veterinary or animal hospitals, provided that no such building, kennel or exercise runway is closer than 100 feet to any residence or Residential District;
- (k) Accessory buildings and uses which are customarily incidental to the uses set forth in this section; and
- (l) Boarding houses for more than ten individuals.

C-1 Neighborhood Commercial
1260.03 PERMITTED USES.

In a C -1 Neighborhood Commercial District, a building or premises shall be used only for the following purposes:

- (a) Any use permitted in the O-1 Office District;
- (b) Bakeries, provided that the production of baked goods is limited in quantity to that sold at retail on the premises;
- (c) Banks, including drive-ins;
- (d) Catering businesses, including the serving of meals for private clients and the teaching of cooking classes on the premises;
- (e) Filling stations;
- (f) Hospitals and clinics for animals, but not kennels;
- (g) Laundromats;
- (h) Offices;
- (i) Painting and decorating shops;
- (j) Restaurants, except drive-in or fast food restaurants;
- (k) Stores or shops for the conduct of retail business;
- (l) Stores for the collection and distribution of laundry and dry cleaning, but not for the treatment, cleaning or processing of such articles;
- (m) Service establishments, such as radio or shoe repair shops; and
- (n) Accessory buildings and uses customarily incidental to the set forth in this section.

O-1 Office District
1258.04 PERMITTED USES.

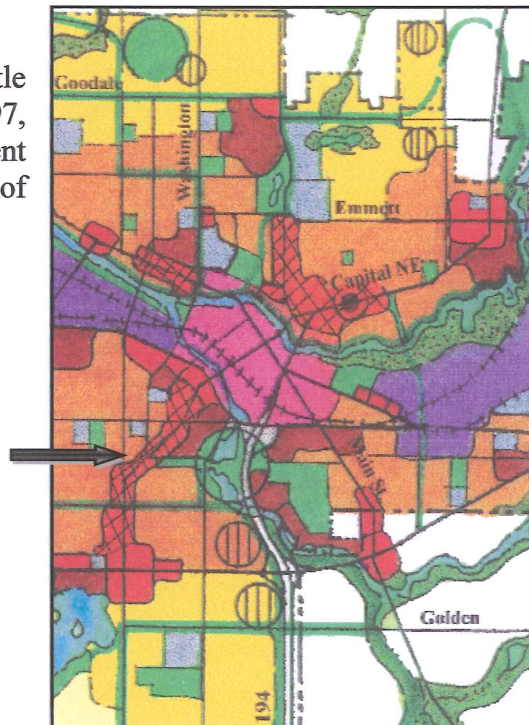
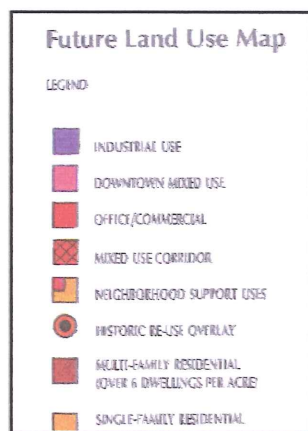
In an O-1 Office District, a building or premises shall be used only for the following purposes:

- (a) General and professional offices, including medical offices, attorneys' offices, engineers' offices, insurance agencies, architects' offices and similar office uses;
- (b) Medical and dental clinics or laboratories;
- (c) Art studios and galleries, music studios operated in conformance with the noise control ordinance, being Section 652.07, photographic studios and galleries, and interior design or decorating studios;
- (d) Libraries, museums and similar institutions of a noncommercial nature;
- (e) Business offices, including show or display rooms for products or merchandise, but excluding the sale of such merchandise from the premises;
- (f) Funeral homes;
- (g) Business schools and colleges;
- (h) Nonprofit, noncommercial, quasipublic and public uses;
- (i) Retail florist or flower shops;
- (j) Stores for the collection and distribution of laundry and dry cleaning, but not for the treatment, cleaning or processing of such articles on-site;
- (k) Tourist homes or bed and breakfast houses, but only when off-street parking is provided upon the lot or adjoining property, which space is adequate to accommodate one car for each room available for tourists; and
- (l) Accessory buildings and uses customarily incidental to the uses set forth in this section.

Master Plan

The Planning Enabling Act of 2008 requires a master plan be prepared and adopted that will “guide and accomplish development that is coordinated, adjusted, harmonious, efficient, and economical; that considers the character of the planning jurisdiction and its suitability for particular uses, judged in terms of such factors as trends in land and population development; and will, in accordance with present and future needs, best promote public health, safety, morals, order, convenience, prosperity, and general welfare.” The master plan focuses on desired land use patterns for typically a twenty year time frame, and the enabling legislation and case law require that zoning be based upon this master plan.

Relative to the current rezoning request, the City of Battle Creek, in its Comprehensive Plan that was adopted in 1997, indicates on the Future Land Use this corridor and adjacent properties as “Mixed Use Corridor” to allow for a mix of commercial, office, and residential uses.



The Comprehensive Plan also includes a goal of maintaining and improving the existing commercial corridors, specifically including Capital Avenue, S.W., as viable business and office locations. The master plan further designates this corridor as one that should be targeted for revitalization efforts, finding the limited parcel depth and off-street parking areas a concern, and suggests acquisition and demolition of properties as well as parcel consolidation as a means to improve redevelopment opportunities.

Additionally, the Comprehensive Plan lists as a policy, "The Planning Commission will review zoning of land for commercial use and where necessary, propose zoning changes to the City Commission to ensure an adequate supply of well located, properly zoned parcels of different sizes, with adequate public services to meet a wide range of commercial and office needs. The Planning Commission shall keep commercial land uses within areas currently used for commercial purposes or planned for future commercial use providing all required public services are available."

Public Hearing and Notice Requirements

In accordance with the Zoning Enabling Act of 2006, an advertisement of the public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, August 5, 2010, and notices of the public hearing were also sent by regular mail on February 1, 2010 to eighty three (83) property owners and occupants of properties located within 300 feet of the subject parcel. To date, the Planning Department has not received any questions or comments regarding this request.

Neighborhood Outreach

The applicant will be presenting his request to the September 9, 2010 meeting of Neighborhood Planning Council #3, as their August meeting was cancelled.

Analysis and Recommendation

As outlined above, the request for a rezoning solely deals with the zoning and subsequently the uses that would be allowable on a property, and not the actual development proposal. Consideration should be given to the surrounding zoning and land uses, existing infrastructure, and most importantly consistency with the Comprehensive Plan.

Therefore, planning staff recommends that the Planning Commission recommend approval to the City Commission the Zoning Reclassification Petition Z-02-10, a zoning reclassification from R-1C Single Family Residential to C-3 Intensive Business District, based on the following findings:

- As outlined above, the Future Land Use map of the 1997 Comprehensive Plan designates these properties as Mixed Use Corridor, including commercial, office, and residential uses. Additionally, the plan specifically targets this corridor for revitalization strategies including acquisition and demolition of properties as well as parcel consolidation as a means to improve redevelopment opportunities. Therefore, the request to rezone this property to C-3 Intensive Business District is consistent with the 1997 Comprehensive Plan.
- Taking into consideration the existing densely-grouped, highly-trafficked commercial nature of this corridor, as well as existing site development regulations in place including

parking and screening, the uses permitted by the rezoning will not be detrimental to the neighborhood or surrounding land uses.

- The parcel is contiguous to the C-3 Intensive Business District zoning district and existing commercial land uses along the corridor, and therefore, the rezoning of this property to C-3 Intensive Business District will not create an instance of spot zoning.
- As the existing parcel and use of the structure are legal nonconforming, rezoning of this property, and subsequent combination of this parcel with 548 Capital Avenue, S.W., will eliminate the nonconforming parcel and use, which is the intent of the Zoning Enabling Act of 2006 and local zoning ordinance.
- As a primary arterial, Capital Avenue, S.W. is able to accommodate moderate to high levels of traffic. Additionally, the existing infrastructure, including the size and availability of public water and sanitary sewer support a higher intensity land use than is allowed by the current zoning. Therefore, the existing infrastructure supports, and is consistent with, the rezoning request.

Attachments

The following information is attached and made part of this Staff report.

1. Zoning Reclassification Application Form and Supplemental Information (Petition #Z-02-10)

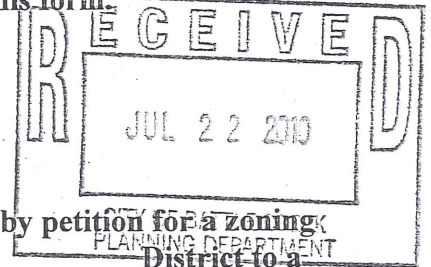
PETITION FOR A ZONING RECLASSIFICATION



City of Battle Creek, Michigan Department of Planning and Zoning

Petition No. Z-02-10

Please read instruction on reverse before completing this form.
If additional space is required, attach separate sheet.



The City Commission of the City of Battle Creek, Michigan

Honorable Mayor and City Commissioners:

I / We, the undersigned owner(s) of the property described below, do hereby petition for a zoning reclassification of this property from a R-1C District to a C-3 District.

Legal Description of Property: PARCEL #8440-00-011-1

8440-00-021-0: ASSES PLAT OF TRICRA ADD LOTS 21+22 TOGETHER WITH 8 FT DRIVEWAY EASE C/L BEING N LI OF S 3.25 FT OF LOT 10 - THIS IS ALREADY ZONED C-3

8440-00-011-1: ASSES RE-PLAT OF TRICRA ADD LOTS 10+11, EXC W 95 FT THEREOF, TOGETHER WITH 8 FT DRIVEWAY EASE, C/L OF WHICH IS A L I R N G D A R W I T H A L Y I N G 3.25 FT N OF S L I OF SD LOT 10 ((LOT 10, EXC W 95 FT REMOVED FROM 8440-00-010-0 & ADDED TO THIS PARCEL IN 1997)) - THIS PARCEL ~~IS~~ TO BE REZONED TO C-3 IS REQUESTED

Present Use of Property:

LAND LOCKED PROPERTY WITH A 30'x40' POLE BUILDING USED FOR STORAGE

Proposed Use of Property:

ANY ALLOWABLE USE; WILL BE ATTACHED TO FRONT PARCEL OF LAND WHICH IS CURRENTLY ZONED C-3.

Reasons why petitioner feels that a zoning reclassification should be granted:

1. PROPERTY IS CURRENTLY LEGAL NON-CONFORMING; THIS CHANGE WOULD BRING PROPERTY INTO CONFORMANCE 2. THIS PROPOSED RE-ZONING WILL NOT NEGATIVELY IMPACT THE COMMUNITY AS ADJACENT PROPERTIES ALREADY HAVE OTHER CONTIGUOUS C-3 PROPERTIES 3. AT YEARS END PARCEL 8440-00-011-1 WILL BE JOINED WITH 8440-00-021-0, A C-3 ZONED PARCEL.

Property Owner(s) _____ or Agent X (Check one)

JOEL E. FULTON FOR FULTON GOODWILL ENTERPRISES, LLC

Name

539 CAPITAL AVENUE SW, BATTLE CREEK, MI 49015

Address

269-968-4229 269-968-4867

Telephone

Joel E. Fulton

Signature

Name

Address

Telephone

Fax

Signature

FOR OFFICE USE ONLY

Date Petition Received: 7/22/10

Petition Fee Received: \$600.00

Received By: Christine Hilton

Planning Commission Recommendation:

Approve _____ Deny _____ Date _____

City Commission Action:

Approve _____ Deny _____ Date _____

Resolution No. _____

Kerry Jurgens Fowler
4760 S Myrtle Way
Homosassa, FL 34448
(352) 229-6817

July 21, 2010

To whom it may concern:

This is to authorize Joel and/or Jared Fulton d/b/a Fulton Goodwill Enterprises, LLC to apply for a zoning change for the Capital Avenue SW rear vacant lot, situated behind 540-548 Capital Avenue SW, Battle Creek, MI.. This will allow the vacant landlocked lot to become a part of the 540-548 Capital Avenue SW property that is zoned C-3 and bring it into compliance with their intended use of the property.

The property is under the names of James and Alyce Hinchey, my parents. James is deceased and I have Durable Family Power of Attorney for Alyce R. Milan-Hinchey, my mother. Both James' death certificate and my DPOA are recorded documents.

This is also to serve as authorization for any other land use items that may arise. These changes are to be done at the expense of the Fultons and in a legal manner. If there are any questions regarding this or any other matter involving these properties, please feel free to contact me at the above address or phone number.

Kerry Jurgens Fowler D.P.O.A.
for Alyce R. Milan-Hinchey

Executed this 21st day of July 2010 at Homosassa, Citrus County, FL.

Signature Kerry Jurgens Fowler

in the presence of the undersigned witnesses:

WITNESS 1: Full legal name LOYD FOWLER
name Signature: Lloyd Fowler

WITNESS 2: Full legal name [Signature]

WITNESS 2: Full legal name BRYAN WASHINGTON
Signature Bryan Washington

Acknowledgement: This document was acknowledged before me on this 21st day of July 2010 by Kerry Jurgens Fowler.

Signature of Notary Public Elizabeth Smith

Full legal Name Elizabeth Smith

My commission expires 9-23-2011

State of Florida. County of Citrus.

